

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:08-cr-441-T-17MAP

PHILIP WILLIAM COON

**RESPONSE OF DEFENDANT COON TO
MOTIONS OF AINSWORTH BORROWERS
FOR RECOGNITION AS CRIME VICTIMS**

Richard Ainsworth, Louise I. Ainsworth, and Claudia Ainsworth (“the Ainsworths”) have filed two motions¹ seeking recognition as crime victims. Doc. 52, Doc. 54. For the reasons set forth below these motions should be either deferred or denied. In the alternative and at a minimum they cannot be granted without an evidentiary hearing.

With these filings the Ainsworths become the 155th, 156th, and 157th persons to seek victim status in this matter. *See* Doc. 12 (motion on behalf of 104 borrowers); Doc. 18 (motion on behalf of 7 borrowers); Doc. 19 (motion on behalf of 1 borrower); Doc. 30 (motion on behalf of 40 borrowers); Doc. 40 (motion on

¹ The two motions filed by the Ainsworths – the first filed on January 20, 2009, and the second filed the following day – appear to be identical to one another.

behalf of 2 borrowers). The Ainsworths' motions raise many of the same matters now pending before the Eleventh Circuit. For the reasons set forth in the United States' Response to Court's Order Directing Government to Respond to Defendant's Motion for Reconsideration ("United States' Response"), Doc. 55 at 4, this Court presently lacks jurisdiction over these matters. For this reason, the Ainsworths' motions should be deferred until the litigation in the Eleventh Circuit is completed.

In the alternative, the Ainsworths' motions should be denied. The motions should be denied as a threshold matter because they are without evidentiary support. The motions are not accompanied by sworn testimony of any kind. And although both motions purport to be supported by various "composite" exhibits, no exhibits are actually attached to either motion.

The motions should be denied because they are substantively without merit. For the reasons set forth in the United States' Response, among others, the Ainsworths were neither directly nor proximately harmed as a result of Mr. Coon's deprivation of his employer's intangible right to his honest services. The purchase price of the Ainsworths' home – and thus the amount of the Ainsworths' loan from Coast Bank – was based on the home's appraised value. Neither the purchase price

nor the loan amount was affected by the closing costs on the transaction borne by the seller. At a minimum the Ainsworths' motions on these issues – just as the other borrowers – could not be granted without an evidentiary hearing. The Ainsworths have not requested such a hearing.

In addition to largely parroting the allegations made by borrowers 1 through 154, the Ainsworths' motions also appear to assert a theory of harm not raised by borrowers 1 through 154 – the Ainsworths assert that the \$4,185 in closing costs paid by the builder of their \$400,000-plus home² caused the builder to construct for them “a home in a completely unworkmanlike manner” that “is consequently completely unmarketable, and would be even in the best market conditions.” Doc. 52 at ¶9; Doc. 54 at ¶9. No details or supporting evidence is offered regarding these allegations, which are on their face quite striking in breadth, range of complexity regarding unrelated matters, and lack of inherent plausibility. In addition to his previously articulated objections to the positions advanced by the first 154 putative victims, Mr. Coon also objects to the Ainsworths being deemed

²The purchase price is not evident from the Ainsworth motions because, as noted above, neither motion attached any exhibits. The \$400,000 - plus price is inferred because the closing cost at issue was typically 1 percentage point of the loan, which was in turn 100% of the purchase price, which was itself set as 90% of the appraised value of the home and lot.

victims on the theory that he bears responsibility for their builder building an “unworkmanlike” and “unmarketable” home.³

For the reasons set forth above, Defendant Coon respectfully submits that the Ainsworths’ motions be deferred or denied. In the alternative they should be the subject of an evidentiary hearing.

Respectfully submitted,

/s/ James E. Felman

James E. Felman (FBN 775568)

jfelman@kmf-law.com

Katherine Earle Yanes (FBN 159727)

kyanes@kmf-law.com

KYNES, MARKMAN & FELMAN, P.A.

Post Office Box 3396

Tampa, FL 33601-3396

Telephone: (813) 229-1118

Facsimile: (813) 221-6750

Attorneys for Defendant Philip Coon

³Although Mr. Coon does not deem the issue of restitution – as opposed to victim status – ripe at this time, it bears noting that the litigation of the causes of the Ainsworths’ dissatisfaction with the allegedly “unworkmanlike” construction and “completely unmarketable ... even in the best market conditions” nature of their home graphically illustrate why restitution for the 157 (and growing) putative victims is impracticable and unduly burdensome on the sentencing process in this otherwise straightforward matter. *See* 18 U.S.C. §3663A(c)(3).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 26, 2009, I electronically filed the foregoing with the Clerk of the Court which will send a notice of electronic filing to:

Rachelle Bedke
Assistant United States Attorney
rachelle.bedke@usdoj.gov

Marcelino Huerta
huertalaw@lawyers.com

Alan Tannenbaum
atannenbaum@levintannenbaum.com

Notice will be sent by U.S. Mail to:

David J. Plante
The Plante Law Group, PLC
806 North Armenia Avenue
Tampa, Florida 33609

/s/ James E. Felman